

### **Remarks**

The office action of April 29, 2008 ("Action") has been carefully reviewed and these remarks are responsive thereto. Claims 1-26 are pending. Reconsideration and allowance of this application are respectfully requested.

#### ***Comments on Action's Response to Arguments***

On pages 2-4, the Action responds to the arguments set forth in the previous response filed February 8, 2008 ("previous response"). Applicants submit the following comments in response to Arguments A-C set forth in the Action.

##### **1. Response to Argument A analysis**

The Action alleges that the previous response addressing claim 1 improperly attacked the references individually, and not as a combination, when responding to the rejection under 35 U.S.C. § 103(a). Action at 2-3. Applicants are unclear as to why the Action has made this allegation when the previous response addressed how neither reference disclosed a particular feature recited in claim 1, and hence that a *prima facie* case of obviousness has not been established based on the cited references that, either alone or in combination, fail to teach or suggest a claim feature. Specifically, pages 7-8 of the previous response argued that neither reference discloses "processing the identification to select at least two fixed length filters from a plurality of fixed length filters to filter the at least two clusters," as recited in claim 1. On pages 7-8, the previous response explained in detail that U.S. Patent No. 5,951,651 to Lakshman et al. ("Lakshman") does not teach or suggest claimed selection of at least two filters. As noted on page 8 of the previous response, Lakshman selects only one filter to filter a packet, not at least two filters as claimed, and hence does not teach or suggest the claimed selecting. At the bottom of the last paragraph of page 8, the previous response asserted that U.S. Patent No. 5,790,554 to

Pitcher et al. ("Pitcher") also fails to disclose the selection of at least two filters to filter a packet in the manner claimed. The last sentence on page 8 of the previous response then concludes that Laksham and Pitcher, "alone or in combination, fail to teach or suggest all of the features recited in the claimed invention." Emphasis added. Clearly, the Action is incorrect in asserting the previous response attacked the references individually, and not as a combination of references. Instead, the previous response addressed how neither of the cited references teaches or suggests the claimed selection, and hence a proper *prima facie* case of obviousness has not been established. Because of the error in finding that the previous response individually attacked the cited references, as opposed to considering the combination, the Action did not even address the remarks made on pages 7-8 of the previous response.

Once again, Applicants submit that Laksham and Pitcher, alone or in combination, fail to teach or suggest "processing the identification to select at least two fixed length filters from a plurality of fixed length filters to filter the at least two clusters," as recited in claim 1, for at least the reasons set forth on pages 7-8 of the previous response. Should the rejection be maintained, Applicants respectfully request that the Office consider and address the remarks of the previous response. Accordingly, the rejection is improper and Applicants respectfully request that it be withdrawn.

## **2. Response to Argument B analysis**

The Action further asserts that "KSR forecloses the argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness," (Action at 3-4) and hence disagreed with the remarks on pages 9-10 of the previous response attacking the Action's reasons for combining Laksham and Pitcher to find claim 1 obvious and unpatentable under 35 U.S.C. § 103. The Action is undoubtedly referring to the Supreme Court decision in KSR

International. v. Teleflex. 127 S.Ct. 1727 (2007).

While KSR rejected an overly rigid application of the “teaching, suggestion, or motivation” (TSM) test (id. at 1739), the Supreme Court still required proper reasoning as to why one of ordinary skill in the art would have combined known elements in a finding of obviousness. The Court noted that the reason to combine analysis in an obviousness determination “should be made explicit” (id. at 1741), and indicated that “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” Id. at 1741, *citing In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Notably, in no way does KSR foreclose Applicants from challenging the analysis set forth in the Action for combining references in an obviousness determination. Further, as noted in the M.P.E.P., “Office personnel must provide an explanation to support an obviousness rejection under 35 U.S.C. 103.” MPEP § 2141(II). Moreover, “the key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious.” § 2141(III). With that legal framework in mind, Applicants refer to pages 9-10 of the previous response.

The arguments on pages 9-10 of the previous response addressed problems with the obviousness analysis set forth in the previous Office Action. Notably, the previous response identified two key problems in the obviousness determination: (1) Laksham does not appear to suffer from a problem identified in the previous Action and relied on in the previous Action as reasoning for modifying Laksham; and (2) the teachings of Laksham and Pitcher suggest that they are not combinable with one another. As such, the previous response permissibly challenged the reasoning on which the previous Action relied to support the legal conclusion of obviousness. See KSR, 127 S.Ct. at 1727; M.P.E.P. § 2141. These problems with combining

the cited references remain in the current Action. Because the Action failed to address either of these arguments, Applicants submit that the rejection is improper. Applicants assert that the Action has not articulated proper reasoning in its obviousness determination for combining Laksham and Pitcher in view of applicable case law and the M.P.E.P. based on the reasons set forth on pages 9-10 of the previous response, and respectfully request that the rejection of claim 1 under 35 U.S.C. § 103 be withdrawn.

### **3. Response to Argument C analysis**

The previous response noted that Laksham does not teach or suggest the features of claim 2, which recites that “the plurality of fixed length filters have a common length.” In reply, the Action asserted that:

Argument C: Lakshman’ s system does not indicate whether any filters have a common length.

In response, the Examiner disagrees. Lakshman teaches that potential filters can have a specific

length, such as 512 bits *each* (see column 4, lines 28-47).

Action at 4. Applicants respectfully disagree. The cited lines of Laksham do not support this argument set forth in the Action.

The Action is confusing the bit-mapped vectors of Laksham with the filters. When describing the bit-mapped vectors, Laksham discloses that “[a]ssociated with each partition  $w_i$  of each array is a bit-mapped vector that functions to *keep track of the list of potential filters*  $f_1, \dots, f_m$  associated with that array.” Laksham at col. 4, ll. 28-30 (emphasis added). In contrast, when describing the filters, Laksham discloses that a filter functions to classify “packets based on a set of rules and specifies operations that must be performed on the packets based on these rules.” *Id.* at col. 3, ll. 31-33. Thus, the bit-mapped vectors of Laksham keep track of a list of potential filters, but are not the filters themselves.

At the lines cited in the Action, Laksham discusses the number of bits of the bit-mapped vectors, but does not indicate the number of bits of the filters. Specifically, Laksham describes that “[e]ach bit vector ranges in length of, for example, 512 bits each, but, preferably, is as big as the number of filters that must be supported with each bit corresponding to a filter.” *Id.* at col. 4, ll. 30-33 (emphasis added). At these lines, Laksham is discussing the number of bits of the bit-mapped vectors, not the number of bits of the filters. As such, the Action is relying on a feature of bit-mapped vectors, not of the filters, in finally rejecting the claim features of “the plurality of fixed length filters [having] a common length.” Thus, the statement made in the Action that “Laksham teaches that potential filters can have a specific length, such as 512 bit each” (Action at 4) is incorrect. Nowhere does Laksham teach or suggest fixed length filters having a common length. Thus, the rejection of claim 2 is improper.

As for responses to the rejection of the other claims, Applicants incorporate the previous response by reference and respectfully refer the Office thereto.

In sum, the rejection is improper as the Action has made at least the above errors when considering the previous response, applicable case law, the M.P.E.P., and the teachings of the cited references. Applicants respectfully request that the previous response be reconsidered and that the claims be allowed.

**CONCLUSION**

All rejections having been addressed, Applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicits prompt notification of the same. Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the number set forth below.

Respectfully submitted,

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